



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. **78-852**

BURTON A. LIBRACH,
Petitioner,

v.

FEDERAL BUREAU OF INVESTIGATION
WILLIAM H. WEBSTER, DIRECTOR,
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
and
GRIFFIN B. BELL, ATTORNEY GENERAL OF
THE UNITED STATES,
Respondents.

MOTION FOR EXPEDITED DECISION ON GRANTING
PETITIONER'S PETITION FOR A WRIT OF CERTIORARI;
AND FOR EXPEDITED SUBMISSION OF THE
CASE TO THE COURT

RONALD L. ROTHMAN
AND ASSOCIATES, P.C.
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Petitioner, Burton A. Librach,
respectfully moves this Court for an
expedited decision on granting his Petition
for A Writ of Certiorari to the United States
Court of Appeals for the Eighth Circuit, and
for an expedited submission of this case to

the Court. As a basis for this Motion, petitioner refers to his Memorandum which is attached hereto.

Respectfully submitted,

RONALD L. ROTHMAN AND
ASSOCIATES, P.C.

RONALD L. ROTHMAN

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MEMORANDUM IN SUPPORT OF PETITIONER'S
MOTION FOR AN EXPEDITED DECISION
GRANTING PETITIONER'S PETITION FOR A WRIT
OF CERTIORARI AND FOR EXPEDITED
SUBMISSION OF THE CASE

At the present time, petitioner has pending before the United States District Court for the Eastern District of Missouri, a Motion for a New Trial concerning his

conviction for violations of 18 U.S.C. §1001. The basis for that Motion is prosecutorial misconduct denying petitioner a fair trial in his criminal case. In essence, that Motion is the reason for this suit's existence. It was through the Freedom of Information Act that petitioner discovered seven documents of Brady and/or Jencks Act material which he requested by pre-trial motions in his criminal trial, and did not receive. Petitioner had two trials, the first being reversed for suppression of evidence both favorable and material to his defense, *U.S. v. Librach*, 520 F.2d 550 (8th Cir. 1975). Petitioner believes the failure to provide him with these seven documents exhibited in his Motion for New Trial, indicates deliberate suppression of favorable evidence in his second trial, thus warranting a new trial.

The Court of Appeals generously recognized petitioner's time problems (petitioner was required to file his Motion for New Trial by November 7) as it granted his Motion for an Expedited Hearing in that Court. Specifically, petitioner filed his Notice of Appeal on September 18, 1978 and a Motion for Expedited Hearing that same day. One week later, the Court of Appeals granted that Motion, giving petitioner until September 29, to file his brief, and allowing the government one week from that date to file its brief. The Court also granted petitioner a special hearing on the second day (October 17) of its fall term, at 8:30 a.m., ahead of the other cases on the docket for that day.

The Court of Appeals once again recognized petitioner's time limitation by

filing its opinion deciding the case on October 19. The court also stated, "[b]ecause Librach faces a time limitation, it is necessary to expedite the proceedings on remand." *Librach v. Federal Bureau of Investigation, et al.*, Slip. Op. No. 78-1671 (8th Cir. October 19, 1978) at 4. It therefore directed the District Court to file its Order complying with the Court's mandate of October 19, by October 31, 1978.

Petitioner would note that the Court of Appeals also quickly decided his Petition for a Writ of Mandamus to that Court in order for him to file this Petition for Certiorari, at the earliest practicable date. Petitioner filed that Petition with the Court on October 30, 1978. On November 1, 1978, the Court issued its mandate opening the way for this Petition to the Supreme Court.

As some of the exempted documents requested may contain further evidence supporting this Motion for New Trial, petitioner feels that a rapid decision by this Court, of whether it will grant his Petition for a Writ of Certiorari is warranted. Petitioner also believes that the public's interest in full and fair adjudication of criminal cases warrants special consideration of this case by the court. See *Cleaver v. Kelly*, 415 F.Supp. 80, 82 (D.C. D.C. 1976).

Beyond this, petitioner believes that the policy and language of the FOIA favor special consideration of this case. See specifically, 5 U.S.C. 552 (a)(4)(D) which states:

Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

While the granting of a Writ of Certiorari is discretionary with the Court, petitioner would submit that the policy of the Act would favor this Court reaching an immediate decision on whether to grant the Writ, and an expedited hearing and submission of the case should the court decide to grant the Writ.

In the event the Court decides to grant the petition for Certiorari, petitioner has attached hereto, a suggested briefing schedule for the Court's consideration. Petitioner believes that the facts surrounding this case and the clear policy of the FOIA warrant an expeditious handling of this case. He therefore respectfully request the Court to make a speedy decision concerning the granting of Petitioner's Petition for a Writ of Certiorari and an expedited hearing and submission of the case to the Court should it decide to grant the Writ.

Respectfully submitted,

RONALD L. ROTHMAN AND
ASSOCIATES, P.C.

RONALD L. ROTHMAN

PETITIONER'S SUGGESTED BRIEFING SCHEDULE

Petitioner's brief one week from the date of the Court's mandate granting the Petition for Certiorari.

Respondent's brief one week after the date petitioner files his brief in the Court.

Petitioner respectfully requests that this matter be placed on the Court's calendar for oral argument at the earliest date convenient and practicable, consistent with the Docket of the Court.